

C.B., England] BRITISH LIFE ASSURANCE COMPANY (appellants) v. WARD (respondent.) April 25.

An agent for an Assurance Company has no implied authority to waive a forfeiture of a policy.

A. insured his wife's life; the premiums were to be paid weekly, and the policy forfeited if the premiums should be in arrear for more than four weeks. The premiums were not paid for eleven weeks. The agent of the company then received payment of the arrears:

Held, that in an action on the policy, the company were not liable, and that the agent had no implied authority to waive the forfeiture by accepting payment of the arrears.

This was an appeal from the decision of a County Court. The case stated that the plaintiff in the County Court insured the life of his wife in the office of the defendants on the 1st February, 1853, the premiums being payable weekly; that on a card given to the assured there was a notice that "members must pay the premiums regularly, and all members who allow the payments to be in arrear more than four weeks will forfeit their policies." On the 27th October, 1853, there were eleven weekly payments in arrear. On the 2nd November, one Gerard, the agent of the defendants, received payment of the arrears. On the 11th November the insured died. The defendants refused to pay the amount of the policy, on the ground that their agent had no authority to waive the forfeiture of the policy by the nonpayment of the premiums. The case found that the person who received the arrears of premiums was the sole local agent of the defendants, but that the defendants gave him no express authority to waive the forfeiture. The judge decided in favor of the plaintiff.

Tapping for the appellants.—The question is, whether the agent of the defendants had any authority to waive the breach. The case states that he had no express authority, and no authority can be implied from the facts stated in the case. The plaintiff must rely upon the general power of an agent to waive the nonpayment of the premiums. But his position as agent gives him no such authority: (*Acey v. Fernie*, 7 M. & W. 151.) In *Wing v. Harvey*, 23 L.J. 511, the circumstances were different: in that case, premiums had been received after breach for fifteen years, with the knowledge of the directors. Suppose the premiums had been payable yearly, and premiums had been in arrear for eleven years, could it be said that the agent had authority to waive the breach?

Keating, Q.C., for the respondent.—If there was any evidence for the jury of authority to the agent, that is sufficient for the judge, being judge of facts, to decide as he has done. [JERVIS, C.J.—From what do you say the judge inferred an authority?] I presume the judge found an authority from the fact of Gerard being the only local agent, and from a presumption that he must have had some secret instruction giving him authority.

JERVIS, C.J.—The judgment in this case must be reversed. I understand the case to set out everything from which the judge could find authority to the agent to waive the forfeiture. I do not see that any authority can be inferred from the facts stated; and my brother Williams suggests that the case proceeded on a mistake, and that the question is, not whether the agent had authority to waive a forfeiture, but whether he had authority to make a new contract? It is clear he had not. It is not like a waiver by a landlord of a forfeiture by his tenant for nonpayment of rent.

Judgment for a nonsuit.

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THE LAW JOURNAL.

JUNE, 1856.

THE ADMINISTRATION OF JUSTICE—THE OFFICE OF COUNTY JUDGE.

We subjoin an article from the *Law Times*, universally admitted to be one of the first legal Journals in Great Britain. The reference is to an Editorial, "The Administration of Justice in the Local Courts," which appeared in this Journal in February last, and the views we therein expressed, it is gratifying to find, are endorsed by so high an authority. We simply presented the array of facts bearing on the office and position of our County Judges, but they were amply sufficient to commend our suggestions to the favorable consideration of those who might be willing and able to do justice in the premises. What has been done? There is a measure now before the House improving somewhat the remuneration of the County Judges—doubtless it will become law; but it aims more at accomplishing the minor object—Justice to individual Judges; than the higher end—improving the important office of Local Judge, so as to make it an object of laudable ambition to men distinguished for acquirements and talents which have secured to them eminence at the Bar.

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